IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

LR Of Ramkishan Srimali.
vs.
LRs. of Ganga Das and another.

S.B.CIVIL SECOND APPEAL NO.25/1986 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 23.12.1985 PASSED BY SHRI PREM PRATAP SINGH, ADDITIONAL DISTRICT JUDGE, BIKANER IN CIVIL APPEAL NO.1/1985.

DATE OF JUDGMENT ::: 23.1.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. JK Bhaiya, for the appellant.

Mr. DS Dev, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant/plaintiff is aggrieved against the judgment and decree of the first appellate court dated 23.12.1985 affirming the judgment and decree of the

trial court dated 13.12.1984 whereby the plaintiff's suit was dismissed.

Brief facts of the case are that the plaintiff filed a suit for eviction of his alleged tenant defendant no.1 Gangadas on the ground that the defendant no.1 committed default in payment of rent and, therefore, is liable to be evicted. Another ground taken by the plaintiff was that the suit property has been sublet by the defendant no.1 to the defendant no.2. Further ground was that the suit property was needed for personal bonafide necessity of the plaintiff.

The defendant no.2 contested the suit and submitted that the defendant no.2 is the tenant and the defendant no.1 is not the tenant. The defendant no.1 supported the plaintiff's case fully.

Issues were framed by the trial court.

The trial court determined the rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and according to learned counsel for the appellant, the said determination was against the defendant no.1 alone.

The facts reveal that the defendant no.2 submitted an application seeking permission to deposit the determined rent but that was opposed by the plaintiff. After trial, the trial court held that the defendant

no.2 is tenant and the defendant no.1 is not tenant. Issue of default was also decided against the plaintiff as well as issue of personal bonafide necessity of the suit premises for the plaintiff's need was also decided against the plaintiff. Consequently, the suit was dismissed by the trial court vide judgment and decree dated 13.12.1984.

The appeal was also dismissed by the learned lower appellate court. Hence, this second appeal.

While admitting the second appeal, this Court specifically held that all the questions framed in this second appeal, except the one on the point of default, are based on appreciation of evidence. This Court held that only one substantial question of law is involved in this appeal which is as under :-

> "Whether the findings of the trial court and the first appellate court on the issue regarding default in payment of rent is erroneous ?"

According to learned counsel for the appellant, the finding of the two courts below on the question that the defendant no.2 is the tenant is erroneous and the defendant no.1 has not deposited the rent as determined by the court below, therefore, the decree for eviction should have been passed by the courts

below. It is also submitted that the defendant no.2 admittedly has not deposited the rent but the courts below committed error of law in drawing inference that the plaintiff waived his plea of default because of the reason that the plaintiff himself opposed the efforts of the defendant in depositing the rent in the present suit.

This Court already, as back as on 10.3.1986, has specifically held that the other questions raised by the appellant are questions of fact and the finding is based on evidence and, therefore, no other substantial question of law is involved in this appeal on any other ground including on the ground of challenge to the findings of the court below about the status of the defendant no.2 being tenant and the defendant no.1 being not tenant. This order dated 10.3.1986 has not been challenged and cannot be reviewed by this Court after more than 20 years. Otherwise also, there appears to be no reason for re-appreciating the evidence on this question of fact.

So far as the default is concerned, even according to learned counsel for the appellant, the rent was determined only against the defendant no.1 and the rent was not determined against the defendant no.2. If it is so, then there was no suit against the defendant no.2 for his eviction on the ground of default, even first

default. In that situation, admittedly, the rent was not determined against the defendant no.2 and according to the plaintiff himself, the defendant no.2 was not entitled to deposit the rent and that fact has been taken notice of by the court below specifically. Therefore, the plaintiff cannot say that the defendant though had no right to deposit the rent, still he should have been declared as defaulter in payment of rent. In fact, the facts mentioned above reveal that there was no suit against the defendant no.2 for his default in payment of rent. In these facts and circumstances, the courts below, if, has drawn inference that the plaintiff waived his right to seek eviction decree on the ground of default against the defendant no.2, the courts below have not committed any error of law. But more is that in the facts of the case, the defendant no.2 was not facing any lis on the ground of his default as per the arguments of learned counsel for the appellant submitted today.

In view of the above, this appeal having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya